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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
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11 UNITED STATES OF AMERICA,)
12 Plaintiff(s),) No. CR 07-0688 MAG (BZ)
13 v.)
14 MARINA SCANNELL,) **ORDER GRANTING MOTION**
15 Defendant(s).) **TO SUPPRESS**
16 _____)

17 The motion of defendant Marina Scannell to suppress
18 evidence seized pursuant to a warrantless search following a
19 traffic stop conducted on September 23, 2007 came on for
20 hearing on January 30, 2008. Tim Palm represented the
21 defendant, whose presence had been excused because she is out
22 of the country attending school. Special Assistant United
23 States Attorney Wendy Thomas and law clerk Daniel MacGilligan
24 represented the United States. Officer April Ramos, who
25 arrested defendant, testified. After considering the oral
26 and written arguments of counsel and the testimony of Officer
27 Ramos, the court finds the government has failed to meet its
28 burden of establishing that under the totality of

1 circumstances presented to Officer Ramos on the night of
2 September 23, 2007, she had a "reasonable, articulable
3 suspicion that criminal activity [was] afoot." Illinois v.
4 Wardlow, 528 U.S. 119, 123 (2000).

5 Among the factors which inform the court's decision are:

6 1. Officer Ramos never identified in her testimony
7 what criminal activity she suspected was afoot when she
8 stopped the defendant.

9 2. In its opposition to the motion, the government
10 contended that "Officer Ramos pulled over the defendant's
11 vehicle after Officer Ramos saw defendant make a turn without
12 signaling, in violation of California Vehicle Code § 22107."
13 Opposition Page 3, lines 22-23. During argument, the
14 government conceded that the defendant had not violated any
15 law by turning without signaling. See United States v.
16 Mariscal, 285 F.3d 1127 (9th Cir. 2002) (failure to signal
17 before turning is not illegal if traffic is not affected).

18 3. Officer Ramos has consistently maintained that she
19 alerted on defendant's driving when defendant made an
20 "abrupt" turn into a parking lot. In her testimony, she
21 elaborated significantly on that statement, mentioning such
22 things as the rate of speed at which the turn was made, the
23 lean of the car as it turned, the absence of braking and the
24 subsequent delayed stop at the stop sign after defendant left
25 the parking lot. To the extent that none of this information
26 appears in the declaration Officer Ramos filed in opposition
27 to the motion, let alone in her contemporaneous investigative
28 report and her subsequent DMV report, the court attributed

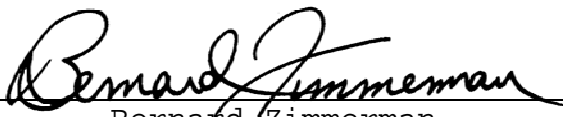
1 less weight to this testimony.

2 4. In any event, the most Officer Ramos testified to
3 was that she suspected defendant was trying to evade the
4 police. Evading the police, without more, is not sufficient
5 to justify a warrantless search. Wardlow, 528 U.S. at 124,
6 125; United States v. Brignoni-Ponce, 422 U.S. 873, 884-85
7 (1975)("attempts to evade officers" is one of a "number of
8 factors [that] may be taken into account" in finding
9 reasonable suspicion).

10 5. Defendant's conduct did not rise to the level of
11 "unprovoked flight upon noticing the police" in a high crime
12 area, which troubled the Court in Wardlow. 528 U.S. at 124.
13 Officer Ramos testified that after defendant entered the
14 parking lot, she turned around, left the parking lot and
15 turned toward the patrol car, before turning right onto
16 Lincoln Blvd.

17 **IT IS THEREFORE ORDERED** that defendant's motion is
18 **GRANTED** and the evidence obtained by the Park Police
19 subsequent to the stop is **SUPPRESSED**.

20 Dated: February 1, 2008

21 
22 Bernard Zimmerman
United States Magistrate Judge

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